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ASSOCIATES, INC.

8  
9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

11 TOP RANK BUILDERS, INC., a Nevada  
Corporation; and EFRAIN RENE MORALES  
12 MORENO, individually; and as sole officer and  
shareholder of TOP RANK BUILDERS, INC.,

13  
14 Plaintiffs,

15 v.

16 CHARLES ABBOTT ASSOCIATES, INC., a  
California Corporation; WILLIAM B.  
17 BROWNING, an individual; AMERICAN  
WIND & SOLAR, INC., a Nevada Corporation;  
18 SUNDANCE BUILDERS, LLC, a Nevada  
Limited Liability Company; THOMAS R.  
19 FRANK, an individual; COUNTY OF NYE, a  
political subdivision of the State of Nevada;  
20 DOES I through X, inclusive; and ROE  
21 ENTITIES XI through XX, inclusive,

22 Defendants.  
23

Case No.: 2:16-cv-02903-APG-CWH

**STIPULATION AND ORDER TO STAY  
ACTION TO ALLOW PARTIES TO  
ATTEND MEDIATION AND TO EXTEND  
THE DISCOVERY CUT OFF DATE AND  
DISPOSITIVE MOTION DEADLINE TO  
ALLOW FOR THE COMPLETION OF  
ALL PENDING DISCOVERY IF  
MEDIATION IS NOT SUCCESSFUL**

**(Second Request)**

24 Pursuant to LR 6-2 and 26-4 the Parties, through their respective counsel of record, hereby  
25 agree and stipulate and request this Court to issue a stay in the pending discovery to allow the  
26 Parties to participate in mediation or a settlement conference. The Parties further request that the  
27 current discovery cut-off date be extended to expire thirty (30) days after conclusion of mediation  
28 or the settlement conference and the dispositive motion deadline be extended to expire at sixty (60)

1 days after the conclusion of mediation or settlement conference. In support of this Stipulation and  
2 Request, the Parties state as follows:

3 **A. DISCOVERY COMPLETED TO DATE**

4 **i. Production of Witnesses and Documents:**

5 1. Plaintiffs Top Rank Builders, Inc. ("TRB") and Efrain Rene Morales Moreno  
6 ("Morales") (collectively, the "Plaintiffs") produced their Initial List of Witnesses and Documents.

7 2. Plaintiffs produced their First Supplemental List of Witnesses and Documents.

8 3. Plaintiffs produced their Second Supplemental List of Witnesses and Documents.

9 4. Defendant Nye County ("Nye") produced its Initial List of Witnesses and  
10 Documents.

11 5. Defendant Nye produced its First Supplement to List of Witnesses and Documents.

12 6. Defendant Nye produced its Second Supplement to List of Witnesses and  
13 Documents.

14 7. Defendant Charles Abbott Associates, Inc. ("CAA") produced its Initial List of  
15 Witnesses and Documents.

16 8. Defendant CAA produced its First Supplement to List of Witnesses and  
17 Documents.

18 9. Defendant CAA produced its Second Supplement to List of Witnesses and  
19 Documents.

20 10. Defendant CAA produced its Third Supplement to List of Witnesses and  
21 Documents.

22 11. Defendant CAA produced its Fourth Supplement to its List of Witnesses and  
23 Documents.

24 12. Defendant William B. Browning ("Browning") produced his Initial List of  
25 Witnesses and Documents.

26 13. Defendant American Wind & Solar, Inc. ("AWS") produced its Initial List of  
27 Witnesses and Documents.  
28

1                    **ii.        Written Discovery and Responses:**

2                    14.        Plaintiff TRB issued its First Set of Interrogatories to Defendant CAA.

3                    15.        Plaintiff TRB issued his First Set of Interrogatories to Defendant Nye.

4                    16.        Plaintiff TRB issued its First Set of Interrogatories to Defendant AWS.

5                    17.        Plaintiff TRB issued its First Set of Interrogatories to Defendant Browning.

6                    18.        Plaintiff TRB issued its First Set of Request for Production of Documents to  
7 Defendant CAA.

8                    19.        Plaintiff TRB issued its Second Set of Request for Production of Documents to  
9 Defendant CAA.

10                   20.        Plaintiff TRB issued its First Set of Request for Production of Documents to  
11 Defendant Nye.

12                   21.        Plaintiff TRB issued its First Set of Request for Production of Documents to  
13 Defendant Browning.

14                   22.        Plaintiff TRB issued its First Set of Request for Production of Documents to  
15 Defendant AWS.

16                   23.        Plaintiff Morales issued his First Set of Interrogatories to Defendant CAA.

17                   24.        Plaintiff Morales issued his First Set of Interrogatories to Defendant Nye.

18                   25.        Plaintiff Morales issued his First Set of Interrogatories to Defendant Browning.

19                   26.        Plaintiff Morales issues his First Set of Request for Production of Documents to  
20 Defendant CAA.

21                   27.        Plaintiff Morales issues his First Set of Request for Production of Documents to  
22 Defendant Nye.

23                   28.        Plaintiff Morales issues his First Set of Request for Production of Documents to  
24 Defendant Browning.

25                   29.        Plaintiff Morales issues his First Set of Request for Admissions to Defendant  
26 Browning.

27                   30.        Plaintiff Morales issues his First Set of Request for Admissions to Defendant Nye.

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31. Defendant CAA issued its First Set of Interrogatories to Plaintiff TRB.
32. Defendant CAA issued its First Set of Interrogatories to Plaintiff Morales.
33. Defendant CAA issued its First Set of Interrogatories to Defendant Nye.
34. Defendant CAA issued its First Set of Request for Production of Documents to Plaintiff TRB.
35. Defendant CAA issued its Second Set of Request for Production of Documents to Plaintiff TRB.
36. Defendant CAA issued its Third Set of Request for Production of Documents to Plaintiff TRB.
37. Defendant CAA Issued its First Set of Request for Admissions to Defendant Nye.
38. Defendant CAA issued its First Set of Request for Admissions to Defendant AWS.
39. Defendant CAA issued its First Set of Request for Admissions to Defendant Browning.
40. Defendant Nye issued its First Set of Interrogatories to Plaintiff TRB.
41. Defendant Nye issued its First Set of Interrogatories to Plaintiff Morales.
42. Defendant Nye issued its First Set of Request for Production of Documents to Plaintiff TRB.
43. Defendant Nye issued its First Set of Request for Production of Documents to Plaintiff Morales.
44. Defendant Browning issued his First Set of Interrogatories to Plaintiff TRB.
45. Defendant Browning issued his First Set of Interrogatories to Plaintiff Morales.
46. Defendant Browning issued his First Set of Request for Production of Documents to Plaintiff TRB.
47. Defendant Browning issued his First Set of Request for Production of Documents to Plaintiff Morales.
48. Defendant Browning issued his First Set of Request for Admissions to Plaintiff TRB.

1           49. Defendant Browning issued his First Set of Request for Admissions to Plaintiff  
2 Morales.

3           50. Defendant CAA issued its responses to Plaintiff TRB's First Set of Interrogatories  
4 to Defendant CAA.

5           51. Defendant Nye issued its responses to Plaintiff TRB's First Set of Interrogatories to  
6 Defendant Nye.

7           52. Defendant AWS issued its responses to Plaintiff TRB's First Set of Interrogatories  
8 to Defendant AWS.

9           53. Defendant Browning issued its responses to Plaintiff TRB's First Set of  
10 Interrogatories to Defendant Browning.

11           54. Defendant Browning issued its first supplement to answers to Plaintiff TRB's First  
12 Set of Interrogatories to Defendant Browning.

13           55. Defendant CAA issued its responses to Plaintiff TRB's First Set of Request for  
14 Production of Documents to Defendant CAA.

15           56. Defendant CAA issued its responses to Plaintiff TRB's Second Set of Request for  
16 Production of Documents to Defendant CAA.

17           57. Defendant Nye issued its responses to Plaintiff TRB's First Set of Request for  
18 Production of Documents to Defendant Nye.

19           58. Defendant Browning issued his responses to Plaintiff TRB's First Set of Request  
20 for Production of Documents to Defendant Browning.

21           59. Defendant AWS issued its responses to Plaintiff TRB's First Set of Request for  
22 Production of Documents to Defendant AWS.

23           60. Defendant CAA issued its responses to Plaintiff Morales' First Set of  
24 Interrogatories to Defendant CAA.

25           61. Defendant Nye issued its responses to Plaintiff Morales' First Set of Interrogatories  
26 to Defendant Nye.

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62. Defendant Browning issued his responses to Plaintiff Morales' First Set of Interrogatories to Defendant Browning.

63. Defendant Browning issued his first supplement to answers to Plaintiff Morales' First Set of Interrogatories to Defendant Browning.

64. Defendant CAA issued its responses to Plaintiff Morales' First Set of Request for Production of Documents to Defendant CAA.

65. Defendant Nye issued its responses to Plaintiff Morales' First Set of Request for Production of Documents to Defendant Nye.

66. Defendant Browning issued his responses to Plaintiff Morales' First Set of Request for Production of Documents to Defendant Browning.

67. Defendant Browning issued his responses to Plaintiff Morales' First Set of Request for Admissions to Defendant Browning.

68. Defendant Browning issued his supplement to answers to Plaintiff Morales' First Set of Request for Admissions.

69. Defendant Nye issued its responses to Plaintiff Morales' First Set of Request for Admissions to Defendant Nye.

70. Plaintiff TRB issued its responses to Defendant CAA's First Set of Interrogatories to Plaintiff TRB.

71. Plaintiff Morales' issued his responses to Defendant CAA's First Set of Interrogatories to Plaintiff Morales.

72. Defendant Nye issued its responses to Defendant CAA's First Set of Interrogatories to Defendant Nye.

73. Plaintiff TRB issued its responses to Defendant CAA's First Set of Request for Production of Documents to Plaintiff TRB.

74. Plaintiff TRB issued its responses to Defendant CAA's Second Set of Request for Production of Documents to Plaintiff TRB.

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1           75. Plaintiff TRB issued its responses to Defendant CAA's Third Set of Request for  
2 Production of Documents to Plaintiff TRB.

3           76. Defendant Nye issued its responses to Defendant CAA's First Set of Request for  
4 Admissions to Defendant Nye.

5           77. Defendant AWS issued its responses to Defendant CAA's First Set of Request for  
6 Admissions to Defendant AWS.

7           78. Defendant Browning issued his responses to Defendant CAA's First Set of Request  
8 for Admissions to Defendant Browning.

9           79. Plaintiff TRB issued its responses to Defendant Nye's First Set of Interrogatories to  
10 Plaintiff TRB.

11           80. Plaintiff Morales issued his responses to Defendant Nye's First Set of  
12 Interrogatories to Plaintiff Morales.

13           81. Plaintiff TRB issued its responses to Defendant Nye's First Set of Request for  
14 Production of Documents to Plaintiff TRB.

15           82. Plaintiff Morales' issued his responses to Defendant Nye's First Set of Request for  
16 Production of Documents to Plaintiff Morales.

17           **iii. Experts:**

18           83. Plaintiffs TRB and Morales have produced their initial list of expert witnesses,  
19 summaries and designations.

20           84. Defendants CAA and Browning have produced their rebuttal expert witnesses,  
21 qualifications and reports.

22           **iv. Depositions**

23           85. Deposition of Plaintiff Efrain Rene Morales, individually and as 30(b)(6) witness  
24 for Plaintiff TRB.

25           86. Custodian of Record Depositions for Green Cross of America, Inc. (non-  
26 appearance), SATI Construction and Nye Farm Tech (non-appearance).

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1           87.     Deposition of Nye County's 30(b)(6) Witness for Nye County's licensing and  
2 Permitting Policies and Procedures and Knowledge as to Projects involving Green Cross of  
3 America, Inc.

4           88.     Deposition Faith Simunick, former CAA employee.

5           89.     Deposition of Pamela Webster, Nye County Manager.

6           90.     Deposition of Peter Gnecco, Green Cross of America, Inc.

7           91.     Deposition of Gary Carlson, AIA.

8           92.     Deposition of William Browning.

9           93.     Deposition of Nye Farm Tech, Ltd.'s 30(b)(6) Witness.

10          **v.     Third Party Subpoenas for Records**

11          94.     Defendant CAA issued subpoena duces tecum to the State of Nevada Board of  
12 Contractors.

13          95.     Defendant CAA issued its subpoena duces tecum to Green Cross of America, Inc.

14          96.     Defendant CAA issued its subpoena duces tecum to SATI Construction.

15          97.     Defendant CAA issued its subpoena duces tecum to Nye Farm Tech, Ltd.

16          98.     Defendant Nye issued its subpoena duces tecum to Green Cross of America, Inc.

17          99.     Plaintiff TRB issued its subpoena duces tecum to the State of Nevada Board of  
18 Contractors.

19          **B.     DISCOVERY REMAINING-IN PROGRESS**

20          The Parties have the following depositions scheduled for this action:

21               1. The Deposition of the 30(b)(6) witness for Esmeralda County;

22               2. The Deposition of Guy Marzola, Green Cross of America, Inc.

23               3. The Deposition of Kevin Fisher, Green Cross of America, Inc.

24               4. The Deposition of Sean Wilson, TRB and designated as non-retained expert for  
25 Plaintiffs TRB and Morales.

26               5. The Deposition of Dan Ames, D&J Electrical.

27               6. The Deposition of Geraldo Guzman, Ganda Concrete.



1 7. The Deposition of L. Darrell Lacy, Nye.

2 8. Plaintiffs TRB and Morales' responses to Defendant Browning's written discovery due  
3 one week after resumption of discovery.

4 9. Any and all supplements to prior discovery requests (written and/or at deposition)  
5 wherein the responding party represented that they will supplement their response at a future date.

6 Based on the amounts of fees and costs incurred by the Parties to date, discussions have  
7 arisen about staying all remaining discovery and litigation and placing this matter into mediation  
8 or settlement conference. The fees and costs estimated by the Parties moving forward to complete  
9 discovery; file dispositive motions, oppositions and replies; appear at hearings and court ordered  
10 conferences; engage in extensive pre-trial litigation; and finally prepare for and attend trial is  
11 estimated to be a significant. Extensive discovery has assisted the Parties in identifying and  
12 eliminating claims, issues, damages and to assess any potential risks to the Parties in the action.  
13 Therefore, the Parties believe the time is ripe and there is universal interest in the Parties to pursue  
14 an avenue to stop the further incursion of fees and costs and to engage in meaningful settlement  
15 discussions concerning the action.

16 If mediation or settlement conference is not successful, the Parties request the present  
17 discovery cut-off date be extended to expire thirty (30) days after the formal termination of  
18 mediation or settlement conference. The Parties further request that any remaining discovery in  
19 this action following an unsuccessful mediation or settlement be limited to the discovery pending  
20 at the time the Parties entered into this stipulation. The Parties stipulate that following the  
21 conclusion of an unsuccessful mediation or settlement conference, no additional depositions or  
22 written discovery is allowed other than the items expressly stated herein as pending and needing  
23 completion.

24 The Parties also stipulate to file notice of recommencement of discovery to the Court,  
25 confirming the commencement date of the resumption of discovery, if the mediation or settlement  
26 conference is unsuccessful.

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1 **C. REASONS WHY DISCOVERY WAS NOT COMPLETED**

2 As shown herein, the Parties have expended considerable time, energy and costs litigating  
3 this action. Many depositions have been taken and extensive written discovery and production of  
4 documents from the Parties and third parties have been acquired. Based on the discovery to date,  
5 there is an opportunity for the Parties to engage in detailed, meaningful settlement discussions in  
6 this action in a good faith effort at resolution. Therefore, the Parties stipulate that the time is ripe  
7 for settlement discussions that may ultimately resolve this action. The remaining discovery stated  
8 herein has been previously and timely scheduled in anticipation of completion prior to the current  
9 discovery cut-off date of March 13, 2018. However, the Parties will incur significant fees and  
10 costs completing the discovery and then proceeding to file dispositive motions. These projected  
11 fees and costs could be directed toward meaningful settlement discussions that may resolve the  
12 action.

13 The Parties all represent that this extension is being made in good faith and not to  
14 needlessly delay the proceedings.

15 **D. PROPOSED SCHEDULE FOR COMPLETION OF DISCOVERY**

16

	Current Deadline	Proposed New Deadline
17 Close of discovery	March 13, 2018	30 days following the formal conclusion of mediation or settlement conference
18 Amend Pleadings/Add Parties	N/A	N/A
19 Initial Experts	September 14, 2017	N/A
20 Rebuttal Experts	February 9, 2018	N/A
21 Dispositive Motions	April 17, 2018	60 days following the formal conclusion of mediation or settlement conference

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**E. CURRENT TRIAL DATE**

To the knowledge of the Parties, no trial date has been scheduled in this action.

DATED this 9<sup>th</sup> day of March, 2018.

DATED this 9<sup>th</sup> day of March, 2018.

WEIL & DRAGE, APC

THE WRIGHT LAW GROUP, P.C.

*/s/ John T. Wendland*

*/s/ John Henry Wright*

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Attorneys for Defendant,

Attorneys for Plaintiffs,

CHARLES ABBOTT ASSOCIATES, INC.

TOP RANK BUILDERS, INC. and EFRAIN

RENE MORALES MORENO

DATED this 9<sup>th</sup> day of March, 2018.

DATED this 9<sup>th</sup> day of March, 2018.

MARQUIS AURBACH COFFING

WOODBURY LAW

*/s/ Craig Anderson*

*/s/ Rodney S. Woodbury*

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AMERICAN WIND & SOLAR, INC. and

Attorneys for Defendant,

WILLIAM BROWNING

COUNTY OF NYE

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1 DATED this 9<sup>th</sup> day of March, 2018.

2 WILSON, ELSER, MOSKOWITZ,  
3 EDELMAN & DICKER LLP

4 /s/ David S. Kahn

5 \_\_\_\_\_  
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8 300 S. Fourth Street, 4<sup>th</sup> Fl.  
9 Las Vegas, Nevada 89101  
10 Attorneys for Defendant  
11 WILLIAM BROWNING

12 **ORDER**

13 IT IS SO ORDERED. IT IS FURTHER ORDERED that the parties must file a joint  
14 status report upon completion of the settlement conference or by June 11, 2018,  
15 whichever is sooner.

16 DATED: March 12, 2018

17   
18 \_\_\_\_\_  
19 UNITED STATES MAGISTRATE JUDGE

20 CASE NO. 2:16-cv-02903-APG-CWH  
21 Top Rank Builders, Inc. v. Charles Abbott  
22 Associates, Inc.